

From: George Bethel
To: Microsoft ATR
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Subject: Microsoft Settlement

As per the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16, aka: the "Tunney Act", I would like to render a thought in the matter of the United States v. Microsoft.

Being in this business most of my life, starting at age 11, I can say that Judge Jackson's "Findings of Fact", dated 5 November 1999, was a highly accurate document, and I hope that his conduct with the press does not taint the validity and accuracy of the document. Microsoft has unabashedly bullied, badgered and demolished an industry that was ready to exceed years ago.

Anecdotically, I offer the following as proof. In the time following Judge Jackson's "Conclusions of Law" based on the '99 Findings of Fact, the entire industry has undergone a revival. Sun Microsystems has released the Java2 specification and Oracle has made two major releases of its database software. Further, IBM, which has long since abandoned its desktop development efforts, released a long awaited patch to OS/2, an advanced Operating System that could have won out against Windows in fair market situation. IBM has also started a sweeping change in adapting Linux to run on their entire product line; a change that could not have been thought of had IBM feared Microsoft retaliating for setting a non-Windows standard.

Apple Computer Inc., who has seen it's market decimated by a product that borrowed liberally from Apple's own research, has released no less than 5 major revisions of its MacOS, a company that before then, released revisions every 18 months. Apple Computer Inc. then stopped its releases when Windows 95 was released. While some of the releases were stopped up by its very public internal problems, most of Apple's releases were allowed out because "it was safe to do so". Microsoft will continue to copy the MacOS, but with the Findings of Fact and Conclusions of Law over its head, Microsoft could no longer stop companies from developing for MacOS, fearing the "Oppressive Thumb", as Judge Jackson called it.

The above listed were the lucky companies; others have not fared so well. As I write this note (with apologies in advance for it's length), Be Inc., had its last assets auctioned off. In retrospect, Be never had a chance; it is not possible to create a new Operating System in a computing world dominated by a company and product, as opposed to being dominated by technology, as it was before Microsoft came into the monopoly position it currently enjoys. Another casualty was Silicon Graphics Inc., which just signed over the bulk of its technology patents covering three dimensional rendering to Microsoft. The cost to

Microsoft was \$62.5 million; the cost to SGI was the very reason for its existence in the computer business. Unless SGI has something up it's sleeve, this company will go away. The postmortem of SGI will have Microsoft's marks all over it. The list can go on, and include some unlikely "allies" of Windows products such as Compaq, Acer and Hewlett Packard, but in the interest of brevity, I will leave this be.

In Microsoft's defense, it is impossible to assign a direct "cause and effect" method to most of the company's actions and the resulting damage to the computer industry. They were more "enablers" that triggered a chain of events that stopped the industry in its tracks for four years and counting. The industry theoretically could have embraced "thin client" computing, pushed by Sun and Netscape Communications (see Finding of Fact, page 10, page 34), and embraced by Apple and IBM; but it didn't. Apple could have competed differently and slowed, or even stopped, Microsoft in the marketplace; or even in the courtroom, had they argued things differently.

But things that can be proved in a courtroom as "Cause and Effect" should be enforced to the full extent of the law, in the same manner that a known murderer and bootlegger can be convicted of Income Tax Evasion.

Microsoft, in no uncertain terms, demolished an industry for its own purposes. However, this brings up our, and your, largest problem: the damage is done. Nothing the court imposes can bring back the companies that died in the process of moving the industry forward. Nothing the court does can uproot the millions of people who have tied their future to Windows, and will resist anything other than their familiar product. Nothing, including the complete and utter destruction of the Microsoft Operating System and supporting company, can repair the damage done to the industry. The court can't even ensure that Microsoft won't find a new way to harm the industry.

At most, all the court can do is unlock the shackles imposed on it by Microsoft. And hope that is enough.

Respectfully,

George S. Bethel

CC: Bill Douthett, Alex Nguyen, Arthur Wu